

REMARKS

The Office Action dated May 31, 2006, has been carefully reviewed and the following remarks are made in consequence thereof.

Claims 1-8 are pending in this application. Claims 1-8 stand rejected. Claims 9-20 have been canceled.

The rejection of Claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by Salvo et al. (U.S. Patent No. 6,341,271) "Salvo" is respectfully traversed.

In the Office Action, it is alleged that "claim recitations drawn to the nature/characterization of the particular non-functional descriptive material being acted upon by the claimed *apparatus* (i.e., what the "data" "comprises") have been deemed merely directed to an intended usage of the device, hence, afforded little patentable weight". However, Applicants respectfully submit that the Section 102 rejection of the presently pending claims is not a proper rejection. Specifically, MPEP 2114 recites:

[w]hile features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

Additionally, MPEP 2111.03 cites that the transitional phrases "comprising", "consisting essentially of" and "consisting of" define the scope of a claim with respect to what unrecited additional components or steps, if any, are excluded from the scope of the claim. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., Mars Inc. v. H.J. Heinz Co., 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004); Invitrogen Corp. v. Biocrest Mfg., L.P., 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003); Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997).

Claim 1 recites “to enable users to access data comprising at least one non-conformance”. Applicants respectfully submit that this language is synonymous with data including at least one non-conformance. Thus, the non-conformance is a portion of materials that users can access using the apparatus. As such, Applicants respectfully submit that the non-conformance is not directed to an intended use of the data and does not positively recite functional language. Hence, the portion of Claim 1 reciting “data comprising at least one non-conformance” should be afforded full patentable weight.

Salvo describes an inventory management system that automatically monitors inventory amounts, provides information concerning inventory, and decides if an order for replacement inventory should be placed. The system includes a storage for inventory, an indicator for monitoring and reporting the level of current inventory, and a controller for receiving information from different inventory suppliers and for integrating such information with information on current inventory amounts and estimated future use to decide if an order for replacing inventory should be made. An order is placed automatically to a supplier and the progress for the delivery of replacement inventory is automatically monitored.

Claim 1 recites a web-based supply chain system for improving business productivity including “a server configured with a database of business information, said server further configured with a plurality of user interfaces associated with at least one business transactional application, said server further configured for allowing a user to access and retrieve said at least one business transactional application, said at least one business transactional application including a web page configured to provide access for a plurality of users internal to a business entity and to users external to the business entity to enable users to access data comprising at least one non-conformance that occurs during at least one of an assembly and test stage and a component manufacturing stage of a supply chain process . . . at least one computer . . . a network coupling said at least one computer to said server.”

Salvo does not describe nor suggest a web-based supply chain system as recited in Claim 1. Specifically, Salvo does not describe nor suggest at least one business transactional application including a web page configured to provide access for a plurality of users internal to a business entity and to users external to the business entity to enable users to access data including non-conformances that occur during at least one of an assembly and test stage or a component manufacturing stage. Rather, in contrast to the present invention, Salvo describes a system for managing inventory that includes automatically gathering information about the

current inventory and deciding whether and when replacement inventory should be ordered. As such, Salvo does not describe nor suggest all of the claimed elements of the present invention. Accordingly, Claim 1 is submitted to be patentable over Salvo.

Claims 2-8 depend from independent Claim 1. When the recitations of Claims 2-8 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-8 likewise are patentable over Salvo.

For at least the reasons set forth above, Applicants respectfully request that the Section 102 rejection of Claims 1-8 be withdrawn.

In view of the foregoing remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully requested.

Respectfully Submitted,



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